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Title 5. Appeal and Error

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Including Annotations to the Georgia Reports
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THIS SUPPLEMENT CONTAINS

Statutes:

All laws specifically codified by the General Assembly of the State of Georgia through the 2014 Regular Session of the General Assembly.

Annotations of Judicial Decisions:

Case annotations reflecting decisions posted to LexisNexis® through March 21, 2014. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

Annotations of Attorney General Opinions:

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through March 21, 2014.

Other Annotations:

References to:

Emory Bankruptcy Developments Journal.
Emory International Law Review.
Emory Law Journal.
Georgia Journal of International and Comparative Law.
Georgia Law Review.
Georgia State University Law Review.
John Marshall Law Review.
Mercer Law Review.
Georgia State Bar Journal.
Georgia Journal of Intellectual Property Law.
American Jurisprudence, Second Edition.
American Jurisprudence, Pleading and Practice.
American Jurisprudence, Proof of Facts.
American Jurisprudence, Trials.
Corpus Juris Secundum.
Uniform Laws Annotated.
American Law Reports, First through Sixth Series.
American Law Reports, Federal.

Tables:

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2014 Regular Session of the General Assembly.

Indices:

A cumulative replacement index to laws codified in the 2014 supplement pamphlets and in the bound volumes of the Code.

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TITLE 4

ANIMALS

Chap.

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CHAPTER 8

DOGS

Article 2

Responsible Dog Ownership

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4-8-23.	Investigations by dog control		

ARTICLE 2

RESPONSIBLE DOG OWNERSHIP

4-8-22. Jurisdiction; designation of dog control officer; consolidation of services.

(a) A county's jurisdiction for the enforcement of this article shall be the unincorporated area of the county and a municipality's jurisdiction for such enforcement shall be the territory within the corporate limits of the municipality.

(b) The governing authority of each local government shall designate one or more individuals as dog control officers to aid in the administration and enforcement of the provisions of this article. An individual carrying out the duties of dog control officer shall not be authorized to make arrests unless he or she is a law enforcement officer having the powers of arrest.

(c) Any county or municipality or any combination of such local governments may enter into agreements with each other for the consolidation of dog control services under this Code section. (Code 1981, § 4-8-22, enacted by Ga. L. 2012, p. 1290, § 4/HB 685; Ga. L. 2014, p. 371, § 1/SB 290.)

The 2014 amendment, effective July 1, 2014, in subsection (b), substituted “one or more individuals as dog control officers” for “an individual as dog control officer” in the first sentence and, in the second sentence, substituted “An individual” for “A person” at the beginning and substituted “he or she” for “the person” in the middle. See editor’s note for applicability.

Editor’s notes. — Ga. L. 2014, p. 371, § 6/SB 290, not codified by the General Assembly, provides: “This Act shall become effective on July 1, 2014, and shall apply to all violations and confiscations which occur on or after that date.”

4-8-23. Investigations by dog control officer; notice to owner; hearings; determinations by hearing authority; judicial review.

(a) For purposes of this Code section, the term:

(1) “Animal shelter” shall have the same meaning as set forth in Code Section 4-14-2.

(2) “Authority” means an animal control board or local board of health, as determined by the governing authority of a local government.

(3) “Mail” means to send by certified mail or statutory overnight delivery to the recipient’s last known address.

(b) Upon receiving a report of a dog believed to be subject to classification as a dangerous dog or vicious dog within a dog control officer’s jurisdiction, the dog control officer shall make such investigations as necessary to determine whether such dog is subject to classification as a dangerous dog or vicious dog.

(c) When a dog control officer determines that a dog is subject to classification as a dangerous dog or vicious dog, the dog control officer shall mail a dated notice to the dog’s owner within 72 hours. Such notice shall include a summary of the dog control officer’s determination and shall state that the owner has a right to request a hearing from the authority on the dog control officer’s determination within seven days after the date shown on the notice; provided, however, that if an authority has not been established for the jurisdiction, the owner shall be informed of the right to request a hearing from the probate court for such jurisdiction where the dog was found or confiscated within seven days after the date shown on the notice. The notice shall provide a form for requesting the hearing and shall state that if a hearing is not requested within the allotted time, the dog control officer’s determination shall become effective for all purposes under this article. If an owner cannot be located within ten days of a dog control officer’s determination that a dog is subject to classification as a dangerous dog or vicious dog, such dog may be released to an animal shelter or humanely euthanized, as determined by the dog control officer.

(d) When a hearing is requested by a dog owner in accordance with subsection (c) of this Code section, such hearing shall be scheduled within 30 days after the request is received; provided, however, that such hearing may be continued by the authority or probate court for good cause shown. At least ten days prior to the hearing, the authority or probate court conducting the hearing shall mail to the dog owner written notice of the date, time, and place of the hearing. At the hearing, the dog owner shall be given the opportunity to testify and present evidence and the authority or probate court conducting the hearing shall receive other evidence and testimony as may be reasonably necessary to sustain, modify, or overrule the dog control officer's determination.

(e) Within ten days after the hearing, the authority or probate court which conducted the hearing shall mail written notice to the dog owner of its determination on the matter. If such determination is that the dog is a dangerous dog or a vicious dog, the notice of classification shall specify the date upon which that determination shall be effective. If the determination is that the dog is to be euthanized pursuant to Code Section 4-8-26, the notice shall specify the date by which the euthanasia shall occur.

(f) Judicial review of the authority's final decision may be had in accordance with Code Section 15-9-30.9. Judicial review of a probate court's final decision shall be in accordance with Code Section 5-3-2 and costs shall be paid as provided in Code Section 5-3-22. (Code 1981, § 4-8-23, enacted by Ga. L. 2012, p. 1290, § 4/HB 685; Ga. L. 2014, p. 371, § 2/SB 290.)

The 2014 amendment, effective July 1, 2014, in subsection (a), added paragraph (a)(1); redesignated former paragraphs (a)(1) and (a)(2) as present paragraphs (a)(2) and (a)(3), respectively; in subsection (c), in the second sentence, substituted "seven days" for "15 days" and added the proviso, deleted "also" preceding "provide" near the beginning of the third sentence and added the fourth sentence; inserted "or probate court" in three places in subsection (d) and near the be-

ginning of subsection (e); and, in subsection (f), substituted "Code Section 15-9-30.9" for "Code Section 50-13-19" at the end of the first sentence and added the second sentence. See editor's note for applicability.

Editor's notes. — Ga. L. 2014, p. 371, § 6/SB 290, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2014, and shall apply to all violations and confiscations which occur on or after that date."

4-8-27. Certificates of registration; requirements for issuance of certificate; individuals excluded from receiving registration; limitation of ownership; annual renewal.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required. — Misdemeanor offenses arising under O.C.G.A. § 4-8-27 are offenses for which those charged are to be fingerprinted. 2012 Op. Att’y Gen. No. 12-6.

4-8-28. Notifications by owner; change in ownership of dog; changes in residence.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required. — Misdemeanor offenses arising under O.C.G.A. § 4-8-28 are offenses for which those charged are to be fingerprinted. 2012 Op. Att’y Gen. No. 12-6.

4-8-29. Limitations on dog’s presence off of owner’s premises; penalty for violation; defense.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required. — Misdemeanor offenses arising under O.C.G.A. § 4-8-29 are offenses for which those charged are to be fingerprinted. 2012 Op. Att’y Gen. No. 12-6.

4-8-30. Confiscation by dog control officer; payment of costs for recovery; euthanasia.

(a) A dangerous dog or vicious dog shall be immediately confiscated by any dog control officer or by a law enforcement officer in the case of any violation of this article. A refusal to surrender a dog subject to confiscation shall be a violation of this article.

(b) The owner of any dog that has been confiscated pursuant to this article may recover such dog upon payment of all reasonable confiscation and housing costs and proof of compliance with the provisions of this article, unless such confiscation is deemed to be in error by a dog control officer, an authority, as defined in Code Section 4-8-23, or a probate court. All fines and all charges for services performed by a law enforcement or dog control officer shall be paid prior to owner recovery of the dog. Criminal prosecution shall not be stayed due to owner recovery or euthanasia of the dog.

(c) In the event the owner has not complied with the provisions of this article within 14 days of the date the dog was confiscated, such dog shall be released to an animal shelter, as such term is defined in Code Section 4-14-2, or euthanized in an expeditious and humane manner.

The owner may be required to pay the costs of housing and euthanasia. (Code 1981, § 4-8-30, enacted by Ga. L. 2012, p. 1290, § 4/HB 685; Ga. L. 2014, p. 371, § 3/SB 290.)

The 2014 amendment, effective July 1, 2014, inserted “dog” near the beginning of the first sentence of subsection (a); in subsection (b), in the first sentence, inserted “all” near the middle and added “, unless such confiscation is deemed to be in error by a dog control officer, an authority, as defined in Code Section 4-8-23, or a probate court” at the end; and, in subsection (c), substituted “14 days” for “20 days” near the middle and substituted “shall be released to an animal shelter, as such

term is defined in Code Section 4-14-2, or euthanized in an expeditious and humane manner. The owner” for “shall be destroyed in an expeditious and humane manner and the owner” near the end. See editor’s note for applicability.

Editor’s notes. — Ga. L. 2014, p. 371, § 6/SB 290, not codified by the General Assembly, provides: “This Act shall become effective on July 1, 2014, and shall apply to all violations and confiscations which occur on or after that date.”

CHAPTER 14

STERILIZATION OF DOGS AND CATS IN SHELTERS

Sec.

4-14-2. Definitions.

4-14-2. Definitions.

As used in this chapter, the term:

(1) “Animal shelter” means any facility operated by or under contract for the state or any county, municipal corporation, or other political subdivision of the state for the purpose of impounding or harboring seized, stray, homeless, abandoned, or unwanted dogs, cats, and other animals; any veterinary hospital or clinic operated by a veterinarian or veterinarians which operates for such purpose in addition to its customary purposes; and any facility operated, owned, or maintained by a duly incorporated humane society, animal welfare society, or other nonprofit organization for the purpose of providing for and promoting the welfare, protection, and humane treatment of animals.

(2) “Humane society” means any unincorporated nonprofit organization existing for the purpose of prevention of cruelty to animals.

(3) “Public or private animal refuge” means harborers of unwanted animals of any breed, including crossbreeds, who provide food, shelter, and confinement for a group of dogs, a group of cats, or a combination of dogs and cats.

(4) “Sexually mature animal” means any dog or cat that has reached the age of 180 days or six months or more.

(5) “Sterilization” means rendering a dog or cat unable to reproduce by the surgical removal of its reproductive organs or by rendering a dog unable to reproduce by intratesticular injection approved by the federal government pursuant to 21 U.S.C. Section 360 as of March 7, 2014. (Code 1981, § 4-14-2, enacted by Ga. L. 1994, p. 999, § 1; Ga. L. 2014, p. 371, § 4/SB 290.)

The 2014 amendment, effective July 1, 2014, substituted the present provisions of paragraph (5) for the former provisions, which read: “‘Sterilization’ means the surgical removal of the reproductive organs of a dog or cat in order to render the animal unable to reproduce.” See editor’s note for applicability.

Editor’s notes. — Ga. L. 2014, p. 371, § 6/SB 290, not codified by the General Assembly, provides: “This Act shall become effective on July 1, 2014, and shall apply to all violations and confiscations which occur on or after that date.”

TITLE 5

APPEAL AND ERROR

Chap.

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CHAPTER 3

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5-3-2. Right to appeal from probate courts; exception.

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General Consideration

Inability to extend time for appeal. — Premitting when the final order occurred, the superior court correctly held that the probate court had no authority to extend the time to appeal beyond the statutorily-prescribed period of 30 days. Accordingly, the probate court's order extending the period beyond that provided for in the statute was of no legal consequence, and the superior court did not err in granting summary judgment. *Duncan v. Moreland*, 325 Ga. App. 364, 751 S.E.2d 139 (2013).

Parties participating fully in probate court participating in appeal to superior court. — Superior court erred in dismissing an appeal from a probate proceeding under O.C.G.A. § 5-3-2(a) based on the court's finding that appellants, a decedent's mother and cousin, were not parties to the probate proceeding because appellants were treated by the probate court as parties and participated fully in the proceeding. In re *Estate of Rogers*, 323 Ga. App. 869, 748 S.E.2d 505 (2013).

ARTICLE 2

PROCEDURE

5-3-20. Time for filing appeals.

JUDICIAL DECISIONS

County letter was not a "decision". — Letter from a county to a developer advising that proposals would be considered under an amended ordinance limit-

ing the development of private sewer systems was not a “decision” of the county for purposes of triggering the 30-day period to appeal under O.C.G.A. § 5-3-20; there-

fore, the developer’s claim of inverse condemnation never ripened. Mortgage Alliance Corp. v. Pickens County, 294 Ga. 212, 751 S.E.2d 51 (2013).

5-3-29. De novo investigation.

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GENERAL CONSIDERATION

General Consideration

Cited in Target Nat’l Bank v. Luffman, 324 Ga. App. 442, 750 S.E.2d 750 (2013).

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2. APPLICATION

What Is Judicial Action

2. Application

Petition for writ of certiorari was appropriate remedy for homeowners denied building permit. — Mandamus was not the appropriate remedy for homeowners whose building permit had been denied by a city; rather, the homeowners

were required to pursue the homeowners’ appeal through the filing of a petition for a writ of certiorari, pursuant to Statesboro, Ga., Zoning Ordinance § 1809 and O.C.G.A. § 5-4-1(a); moreover, the homeowners’ appeal was untimely under O.C.G.A. § 5-4-6(a). City of Statesboro v. Dickens, 293 Ga. 540, 748 S.E.2d 397 (2013).

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1. IN GENERAL

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Time for Filing Application

1. In General

Mandamus not appropriate remedy for homeowners denied building permit. — Mandamus was not the appropriate remedy for homeowners whose building permit had been denied by a city; rather, the homeowners were required to pursue the homeowners’ appeal through the filing of a petition for a writ of certiorari, pursuant to Statesboro, Ga., Zoning Ordinance § 1809 and O.C.G.A. § 5-4-1(a); moreover, the homeowners’ appeal was untimely under O.C.G.A.

§ 5-4-6(a). City of Statesboro v. Dickens, 293 Ga. 540, 748 S.E.2d 397 (2013).

Notice

Service must be made diligently. — Although an employee failed to serve the city with a copy of a petition for certiorari within five days as required by O.C.G.A. § 5-4-6(b), the trial court was required to determine whether service was made in a reasonable and diligent manner to effectuate service as quickly as possible. Mangram v. City of Brunswick, 324 Ga. App. 725, 751 S.E.2d 523 (2013).

CHAPTER 5

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5-5-1. Power of probate, superior, state, juvenile, and City of Atlanta courts.

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Reconsideration of pretrial ruling on immunity. — Appellate court erred by reversing a trial court order granting the defendant a new trial because the trial court had the inherent authority to recon-

sider the court’s pretrial ruling on the defendant’s motion for immunity from criminal prosecution under O.C.G.A. § 16-3-24.2 and to rule otherwise. Hipp v. State, 293 Ga. 415, 746 S.E.2d 95 (2013).

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JUDICIAL DECISIONS

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GENERAL CONSIDERATION
APPLICATION

1. IN GENERAL

General Consideration

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Trial court failed to apply the proper standard in assessing the weight of the evidence as requested by the defendant in the defendant's motion for new trial, requiring remand for the trial court to apply the proper standard to the general grounds and to exercise the court's discretion to sit as a thirteenth juror pursuant to O.C.G.A. §§ 5-5-20 and 5-5-21. *White v. State*, 293 Ga. 523, 753 S.E.2d 115 (2013).

Cited in *Hipp v. State*, 293 Ga. 415, 746 S.E.2d 95 (2013).

Application

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**GENERAL CONSIDERATION
APPLICATION**

General Consideration

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Trial court failed to apply the proper standard in assessing the weight of the evidence as requested by the defendant in the defendant's motion for new trial, requiring remand for the trial court to apply the proper standard to the general grounds and to exercise the court's discretion to sit as a thirteenth juror pursuant to O.C.G.A. §§ 5-5-20 and 5-5-21. *White v. State*, 293 Ga. 523, 753 S.E.2d 115 (2013).

Application

Distinction between legally insufficient evidence and verdict against weight of evidence.

Trial court's review of the evidence under O.C.G.A. § 5-5-21 differs from its review of the evidence on a motion for a directed verdict under O.C.G.A. § 17-9-1. In the latter case, the trial court has a duty to grant a directed verdict of acquit-

grounds argument, coupled with the trial court's statements concerning the nature and quantum of the evidence, established that the trial court did, in fact, consider whether the verdict was contrary to or against the weight of the evidence under the proper legal standard, and the trial court did fulfill its role to sit as the thirteenth juror when it denied defendant's motion for a new trial. *Sellers v. State*, 755 S.E.2d 232, 2014 Ga. App. LEXIS 83 (2014).

tal when there is no conflict in the evidence and it clearly demands a verdict of acquittal as a matter of law. *Lavertu v. State*, 325 Ga. App. 709, 754 S.E.2d 663 (2014).

When some evidence supports verdict.

Trial court did not err in denying DUI defendant's motion for new trial under O.C.G.A. § 5-5-21 based on the lack of definitive evidence of intoxication from field sobriety tests and the defendant's acquittal on the charge of failure to maintain a lane because the defendant's blood alcohol level was 0.159 and two or three empty airplane-size vodka bottles were in the defendant's car. *Lavertu v. State*, 325 Ga. App. 709, 754 S.E.2d 663 (2014).

Insufficient evidence of asportation for kidnapping conviction. — Defendant's conviction for kidnapping required reversal because the movement of the victim from one bedroom to another did not further isolate the victim or decrease the potential for rescue, thereby posing no

significant danger to the victim independent of the danger posed by the sexual assault and rape; thus, the evidence of asportation was insufficient. *Sellers v. State*, 755 S.E.2d 232, 2014 Ga. App. LEXIS 83 (2014).

Denial of motion for new trial proper in shoplifting case. — Trial court did not abuse the court's discretion

by denying the defendant's motion for a new trial with regard to the defendant's trial for felony shoplifting because the testimony of the store's loss prevention officer established each element of the crime and provided sufficient evidence to support the conviction. *Parham v. State*, 320 Ga. App. 676, 739 S.E.2d 135 (2013).

5-5-23. Newly discovered evidence.

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EXTRAORDINARY MOTIONS UNDER SECTION NEWLY DISCOVERED EVIDENCE

3. APPLICATION

Extraordinary Motions Under Section

Trial court did not abuse discretion in granting extraordinary motion for new trial. — Trial court did not abuse its discretion in granting plaintiffs' extraordinary motion for new trial based on an auto company's misleading discovery responses with regard to liability insurance because they acted with due diligence to raise their claim that the jury should have been qualified as to the auto company's insurers and the failure to do so raised an unrebutted presumption that they were materially harmed. *Ford Motor Co. v. Conley*, 294 Ga. 530, 2014 Ga. LEXIS 131 (2014).

Newly Discovered Evidence

3. Application

Denial of a motion for new trial not abuse of discretion.

Trial court did not abuse the court's discretion in denying the defendant's motion for a new trial based on newly discov-

ered evidence as although the state discovered, following the convictions for attempted child molestation, that the Internet posting presented to the jury was not the posting to which the defendant responded, the court determined that the defendant had knowledge of the correct posting prior to trial and that, even if not, the correct posting was not so material as to produce a different result. *Muse v. State*, 323 Ga. App. 779, 748 S.E.2d 136 (2013).

Denial of motion proper.

Trial court did not err in denying the defendant's extraordinary motion for a new trial as the defendant could have moved to conduct DNA testing prior to trial and would have discovered that DNA on the gloves did not match the defendant, but rather the codefendant, and the defendant was thus unable to show that the delay in obtaining evidence was not caused by a lack of due diligence as required in an extraordinary motion for new trial. *Bharadia v. State*, 755 S.E.2d 273, 2014 Ga. App. LEXIS 120 (2014).

5-5-24. Error in instructions; objection required in civil cases; requested instructions; review of charges involving substantial error.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

JURY CHARGE

3. APPLICATION

General Consideration

Cited in *Lamar v. All Am. Quality Foods, Inc.*, 323 Ga. App. 572, 746 S.E.2d 665 (2013); *Pampattiwar v. Hinson*, 2014 Ga. App. LEXIS 132 (Mar. 12, 2014).

Jury Charge

3. Application

Charge on suicide in medical malpractice action. — In a medical malpractice suit, the complained-of charge did

not amount to a substantial error as a matter of law because the defendants failed to object to the charge and, in considering the charge as a whole, the instruction that if suicide was a reasonably foreseeable consequence of the defendants' negligent conduct, legal causal connection between that conduct and the injury was not broken and was not an erroneous charge prejudicial to the defendants. *Ga. Clinic, P.C. v. Stout*, 323 Ga. App. 487, 747 S.E.2d 83 (2013).

5-5-25. Other grounds.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Cited in *Hipp v. State*, 293 Ga. 415, 746 S.E.2d 95 (2013).

ARTICLE 3

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5-5-40. Time of motion for new trial generally; amendments; extension of time for filing transcript; time of hearing; priority to cases in which death penalty imposed; appeal not limited to grounds urged; new trial on court's own motion.

JUDICIAL DECISIONS

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APPLICATION

General Consideration

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Application

Qualification of jurors. — Trial court did not abuse its discretion in granting plaintiffs’ extraordinary motion for new

trial based on an auto company’s misleading discovery responses with regard to liability insurance because they acted with due diligence to raise their claim that the jury should have been qualified as to the auto company’s insurers and the failure to do so raised an un rebutted presumption that they were materially harmed. *Ford Motor Co. v. Conley*, 294 Ga. 530, 2014 Ga. LEXIS 131 (2014).

5-5-41. Requirements as to extraordinary motions for new trial generally; notice of filing of motion; limitations as to number of extraordinary motions in criminal cases; DNA testing.

JUDICIAL DECISIONS

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GENERAL CONSIDERATION

APPLICATION

2. WHEN EXTRAORDINARY MOTION PROPER

General Consideration

Cited in *Nazario v. State*, 293 Ga. 480, 746 S.E.2d 109 (2013).

Application

2. When Extraordinary Motion Proper

Juror qualification. — Trial court did not abuse its discretion in granting plain-

tiffs’ extraordinary motion for new trial based on an auto company’s misleading discovery responses with regard to liability insurance because they acted with due diligence to raise their claim that the jury should have been qualified as to the auto company’s insurers and the failure to do so raised an un rebutted presumption that they were materially harmed. *Ford Motor Co. v. Conley*, 294 Ga. 530, 2014 Ga. LEXIS 131 (2014).

5-5-50. Standard for review by appellate court of first grant of new trial.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Cited in *State v. Oliver*, 755 S.E.2d 293, 2014 Ga. App. LEXIS 149 (2014).

CHAPTER 6

CERTIORARI AND APPEALS TO APPELLATE COURTS
GENERALLY

Article 1

Sec.

General Provisions

exceptions to payment; prerequisite to receipt of application for appeal or brief by clerk.

Sec.

5-6-4.

Bill of costs; payment of costs;

ARTICLE 1

GENERAL PROVISIONS

5-6-4. Bill of costs; payment of costs; exceptions to payment; prerequisite to receipt of application for appeal or brief by clerk.

(a) The bill of costs for every application to the Supreme Court for a writ of certiorari or for applications for appeals filed in the Supreme Court or the Court of Appeals or appeals to the Supreme Court or the Court of Appeals shall be \$80.00 in criminal cases and in habeas corpus cases for persons whose liberty is being restrained by virtue of a sentence imposed against them by a state court and \$300.00 in all other civil cases. The costs shall be paid by counsel for the applicant or appellant at the time of the filing of the application or, in the case of direct appeals, at the time of the filing of the original brief of the appellant. In those cases in which the writ of certiorari or an application for appeal is granted, there shall be no additional costs.

(b) Costs shall not be required when at the time the same are due:

(1) The pro se applicant or pro se appellant is incarcerated at the time of the filing;

(2) Counsel for the applicant or appellant was appointed to represent the defendant by the trial court because of the defendant's indigency; or

(3) The applicant, appellant, or counsel for applicant or appellant files an affidavit of indigency.

(c) The clerk shall be prohibited from receiving the application for appeal or the brief of the appellant unless the costs have been paid or the provisions of subsection (b) of this Code section have been satisfied. (Ga. L. 1921, p. 239, § 1; Code 1933, § 6-1702; Ga. L. 1965, p. 650, § 1; Ga. L. 1982, p. 1186, § 1; Ga. L. 1991, p. 411, § 1; Ga. L. 2009, p. 644, § 1/HB 283; Ga. L. 2014, p. 222, § 1/HB 842.)

The 2014 amendment, effective July 1, 2014, rewrote this Code section.

5-6-13. Granting of supersedeas in cases of contempt.

JUDICIAL DECISIONS

Failure to grant requested supersedeas moot. — Mother who was found in contempt for denying a child's father his visitation rights had appealed only the trial court's visitation modification and not the trial court's finding of

contempt; therefore, her challenge to the trial court's denial of supersedeas under O.C.G.A. § 5-6-13(a) based on O.C.G.A. § 5-6-34(e) was moot. *Weeks v. Weeks*, 324 Ga. App. 785, 751 S.E.2d 575 (2013).

ARTICLE 2

APPELLATE PRACTICE

5-6-30. Purpose of article; construction.

JUDICIAL DECISIONS

Liberal construction.

Georgia appellate court is bound by the statutory mandate that the Appellate Practice Act, O.C.G.A. § 5-6-30 et seq., is to be liberally construed so as to bring about a decision on the merits of every case appealed and to avoid dismissal of any case or refusal to consider any points raised therein. *Larose v. Bank of Am., N.A.*, 321 Ga. App. 465, 740 S.E.2d 882 (2013).

Dismissal of appeal was improper.

— Georgia Court of Appeals had jurisdiction over a case wherein a purchaser appealed a trial court's grant of summary

judgment to other defendants and dismissed them, which occurred prior to settling with the sellers as the purchaser did not voluntarily dismiss the remaining defendants to obtain a directly appealable final order and if the parties had not reached a settlement and proceeded to trial, the purchaser would have been able to directly appeal the judgment resulting from the trial. *O'Dell v. Mahoney*, 324 Ga. App. 360, 750 S.E.2d 689 (2013).

Cited in *Terrell County Bd. of Tax Assessors v. Goolsby*, 324 Ga. App. 535, 751 S.E.2d 158 (2013).

5-6-34. Judgments and rulings deemed directly appealable; procedure for review of judgments, orders, or decisions not subject to direct appeal; scope of review; hearings in criminal cases involving a capital offense for which death penalty is sought; appeals involving nonmonetary judgments in child custody cases.

Law reviews. — For annual survey on trial practice and procedure, see 65 *Mercer L. Rev.* 277 (2013).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

1. CONSTITUTIONALITY AND PURPOSE OF SECTION
2. CONSTRUCTION IN GENERAL

WHAT ARE FINAL, APPEALABLE JUDGMENTS

RULINGS NOT APPEALABLE WITHOUT CERTIFICATE

1. IN GENERAL

SUMMARY JUDGMENTS

2. DENIALS

INJUNCTIONS AND RESTRAINING ORDERS

JUDGMENTS OF CONTEMPT

MOOT ISSUES

APPLICATION

1. IN GENERAL

General Consideration

1. Constitutionality and Purpose of Section

Questions decided by appellate court binding as law of case. — Parent could not raise various enumerations of error in the parent's appeal of a custody modification decision because the same issues had been raised in the prior appeals. *Gilchrist v. Gilchrist*, 323 Ga. App. 555, 747 S.E.2d 75 (2013).

2. Construction in General

Cited in Metro Atlanta Task Force for the Homeless, Inc. v. Premium Funding Solutions, LLC, 321 Ga. App. 100, 741 S.E.2d 225 (2013); *Sifuentes v. State*, 293 Ga. 441, 746 S.E.2d 127 (2013); *Miller v. GGNCS Atlanta, LLC*, 323 Ga. App. 114, 746 S.E.2d 680 (2013); *Williamson v. Williamson*, 293 Ga. 721, 748 S.E.2d 679 (2013); *Deal v. Coleman*, 294 Ga. 170, 751 S.E.2d 337 (2013); *Ford Motor Co. v. Conley*, 294 Ga. 530, 2014 Ga. LEXIS 131 (2014); *Bibb County v. Monroe County*, 294 Ga. 730, 755 S.E.2d 760 (2014); *Beringer v. Emory*, 2014 Ga. App. LEXIS 155 (Mar. 14, 2014).

What Are Final, Appealable Judgments

Appellate court had jurisdiction over appeal involving multiple parties. — Georgia Court of Appeals had jurisdiction over a case wherein a purchaser appealed a trial court's grant of

summary judgment to other defendants and dismissed them, which occurred prior to settling with the sellers as the purchaser did not voluntarily dismiss the remaining defendants to obtain a directly appealable final order and if the parties had not reached a settlement and proceeded to trial, the purchaser would have been able to directly appeal the judgment resulting from the trial. *O'Dell v. Mahoney*, 324 Ga. App. 360, 750 S.E.2d 689 (2013).

Rulings Not Appealable Without Certificate

1. In General

Order denying motion to recuse trial judge. — Because review after entry of final judgment of orders denying motions to recuse can protect the parties' interests adequately, such orders are not appealable as collateral orders as to hold otherwise ignores the explicit language of O.C.G.A. § 5-6-34(b); thus, the Georgia Court of Appeals overrules *Braddy v. State*, 316 Ga. App. 292, 729 SE2d 461 (2012). *Murphy v. Murphy*, 322 Ga. App. 829, 747 S.E.2d 21 (2013).

Mother's appeal of an order denying the mother's motion to recuse the trial court judge in a change of custody case brought by the father was dismissed because the order did not award, refuse to change, or modify child custody; thus, it was not appealable under O.C.G.A. § 5-6-34(a)(11) and the appellate court lacked jurisdiction. *Murphy v. Murphy*, 322 Ga. App. 829, 747 S.E.2d 21 (2013).

Summary Judgments

2. Denials

Appealability of denial of summary judgment.

Although exclusion of evidence resulted in reversible error and a remand for a new trial in a matter involving a challenge to a promotional examination as the denial of summary judgment on an issue was enumerated as error, the issue was addressed on appeal. *City of Atlanta v. Bennett*, 322 Ga. App. 726, 746 S.E.2d 198 (2013).

Direct appeal is not available, etc.

Cross-appellants were held not entitled to appeal the denial of the appellants' motion for summary judgment because the order denying the appellants summary judgment was not prior to or contemporaneous with the directly appealable judgment of the co-plaintiff. *Cancel v. Sewell*, 321 Ga. App. 523, 740 S.E.2d 870 (2013).

Injunctions and Restraining Orders

Jurisdiction for appeal was proper.

Because, in addition to appointing a receiver/special master, a trial court issued an immediate, preliminary and permanent injunction against two partners from taking certain business actions, O.C.G.A. § 5-6-34(a)(4) allowed a direct appeal of the order. *Petrakopoulos v. Vranas*, 325 Ga. App. 332, 750 S.E.2d 779 (2013).

Continuance of restraining order is appealable, etc.

Trial court did not abuse the court's discretion by dissolving a temporary restraining order and allowing a bank to proceed with the bank's foreclosure action as it was within the trial court's discretion to condition the extension of injunctive relief upon the mortgagor's placement of an amount of money in escrow reflecting past-due payments on the mortgage, which the mortgagor declined to do. *Morgan v. U. S. Bank Nat'l Ass'n*, 322 Ga. App. 357, 745 S.E.2d 290 (2013).

Judgments of Contempt

Direct appeals may be taken from contempt orders, etc.

Appellate court had jurisdiction to consider the prior orders specified in the

notice of appeal because O.C.G.A. § 5-6-34(a)(2) expressly authorized a direct appeal from an order of contempt. *Allison v. Wilson*, 320 Ga. App. 629, 740 S.E.2d 355 (2013).

No jurisdiction to consider contempt order.

Because the husband never filed the application for discretionary appeal of the June 27th contempt order finding that the husband failed to comply with the terms of the parties' divorce decree, that appeal was dismissed; thus, the husband's current appeal, to the extent that it challenged the previously appealed June 27th contempt order, was dismissed. *Massey v. Massey*, 294 Ga. 163, 751 S.E.2d 330 (2013).

Moot Issues

Appeal deemed moot and dismissed.

As the denial of a former director's putative transferee's motion in limine was based on the former evidence code, and the trial would be based on the new evidence code, an interlocutory appeal of the ruling on the motion in limine was moot. *Am. Nat'l Holding Corp. v. EMM Credit, LLC*, 323 Ga. App. 655, 748 S.E.2d 683 (2013).

Failure to grant requested supersedeas moot. — Mother who was found in contempt for denying a child's father his visitation rights had appealed only the trial court's visitation modification and not the trial court's finding of contempt; therefore, her challenge to the trial court's denial of supersedeas under O.C.G.A. § 5-6-13(a) based on O.C.G.A. § 5-6-34(e) was moot. *Weeks v. Weeks*, 324 Ga. App. 785, 751 S.E.2d 575 (2013).

Application

1. In General

Discretionary review when no direct appeal in custody dispute. — Although a trial court's order in a custody dispute between a child's grandmothers was not an order that was subject to direct appeal as the appellate court had granted the paternal grandmother's application for interlocutory appeal when a prior jurisdictional statute was in effect, the court

exercised the court's discretion to retain the appeal and review the case on the merits. *Barfield v. Butterworth*, 323 Ga. App. 156, 746 S.E.2d 819 (2013).

Order denying legitimation. — Appellate court dismissed an alleged biological father's appeal to a trial court's denial of a petition for legitimation because the alleged father was required to file a discretionary application for appeal under O.C.G.A. § 5-6-35(a)(12) and since no such application was filed, the appellate court was without jurisdiction to hear the merits of the appeal. *Numanovic v. Jones*, 321 Ga. App. 763, 743 S.E.2d 450 (2013).

Order disqualifying counsel. — Because the orders disqualifying appellant attorney from representing the other appellants were interlocutory, not collateral, but the procedures for appealing an interlocutory order were not followed, it was not currently within the appellate court's discretion to consider the disqualification of appellant attorney by direct appeal. *Settendown Pub. Util., LLC v. Waterscape Util., LLC*, 324 Ga. App. 652, 751 S.E.2d 463 (2013).

5-6-35. Cases requiring application for appeal; requirements for application; exhibits; response; issuance of appellate court order regarding appeal; procedure; supersedeas; jurisdiction of appeal; appeals involving nonmonetary judgments in custody cases.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION APPLICATION

1. IN GENERAL
3. DIVORCE

General Consideration

Cited in *Elrod v. Sunflower Meadows Dev., LLC*, 322 Ga. App. 666, 745 S.E.2d 846 (2013); *Williamson v. Williamson*, 293 Ga. 721, 748 S.E.2d 679 (2013); *Bibb County v. Monroe County*, 294 Ga. 730, 755 S.E.2d 760 (2014); *Beringer v. Emory*, 2014 Ga. App. LEXIS 155 (Mar. 14, 2014).

Application

1. In General

Appeal from legitimation proceedings, etc.

Appellate court dismissed an alleged biological father's appeal to a trial court's denial of a petition for legitimation because the alleged father was required to file a discretionary application for appeal under O.C.G.A. § 5-6-35(a)(12) and since no such application was filed, the appellate court was without jurisdiction to hear the merits of the appeal. *Numanovic v.*

Jones, 321 Ga. App. 763, 743 S.E.2d 450 (2013).

3. Divorce

Jurisdiction of trial court. — Trial court had jurisdiction to grant a divorce, as opposed to the State of New York trial court wherein the wife petitioned for a divorce, because there was some evidence to support the trial court's findings on domicile of the parties, including that the husband was stationed in the military in Georgia, they lived in military housing then purchased a home, and continued to live in that home until their separation. *Black v. Black*, 292 Ga. 691, 740 S.E.2d 613 (2013).

Appeal of contempt order.

Because the husband never filed the application for discretionary appeal of the June 27th contempt order finding that the husband failed to comply with the terms of the parties' divorce decree, that appeal was dismissed; thus, the husband's cur-

rent appeal, to the extent that it challenged the previously appealed June 27th contempt order, was dismissed. *Massey v. Massey*, 294 Ga. 163, 751 S.E.2d 330 (2013).

Enforcement of divorce judgment.

By failing to complain in the application for discretionary review of the provisions

of the decree concerning child support, a mother forfeited any appellate review of those provisions, and the Georgia Supreme Court declined to consider that additional enumeration of error. *Zekser v. Zekser*, 293 Ga. 366, 744 S.E.2d 698 (2013).

5-6-38. Time of filing notice of appeal; cross appeal; record and transcript for cross appeal; division of costs; appeals in capital offense cases for which death penalty is sought.

JUDICIAL DECISIONS

ANALYSIS

APPEALABLE JUDGMENTS OR ORDERS JURISDICTION

Appealable Judgments or Orders

Direct appeals may be taken from contempt orders. — Appellate court had jurisdiction to consider the prior orders specified in the notice of appeal because O.C.G.A. § 5-6-34(a)(2) expressly authorized a direct appeal from an order of contempt. *Allison v. Wilson*, 320 Ga. App. 629, 740 S.E.2d 355 (2013).

Jurisdiction

Appellate court without jurisdiction.

Because the defendant did not file ei-

ther a cross-appeal to the state's appeal or a separate notice of appeal regarding the superior court's adverse rulings on the other alleged violations of the statute regarding the presiding judge's allegedly improper questioning of the defendant, the appellate court lacked jurisdiction to consider the defendant's allegations of error arising from the superior court's adverse rulings. *State v. Nickerson*, 324 Ga. App. 576, 749 S.E.2d 768 (2013).

5-6-39. Extensions of time for filing notice of appeal, notice of cross appeal, transcript of evidence, designation of record and other similar motions.

JUDICIAL DECISIONS

ANALYSIS

GRANTS OF EXTENSIONS

1. NOTICE OF APPEAL

Grants of Extensions

1. Notice of Appeal

Authority to grant out of time appeal without specifying order. — Georgia superior court has the authority under O.C.G.A. § 5-6-39(a)(1) and (c) to

grant one 30-day extension of the time for filing the notice of appeal, and nothing in that statute requires the court to specify precisely to which order the extension applied. *Terrell County Bd. of Tax Assessors v. Goolsby*, 324 Ga. App. 535, 751 S.E.2d 158 (2013).

5-6-40. Enumeration of errors.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Cited in *Straus v. Renasant Bank*, 2014 Ga. App. LEXIS 159 (Mar. 14, 2014).

5-6-41. Reporting, preparation, and disposition of transcript; correction of omissions or misstatements; preparation of transcript from recollections; filing of disallowed papers; filing of stipulations in lieu of transcript; reporting at party's expense.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

REPORTING OF VOIR DIRE

APPLICATION

General Consideration

Cited in *Lewis v. State*, 293 Ga. 110, 744 S.E.2d 21 (2013).

Reporting of Voir Dire

Failure to request reporting of voir dire not error. — Counsel's failure to request that voir dire be reported in a defendant's criminal trial was not error or ineffectiveness as there was no requirement that the entire jury selection be reported and made part of the record in a non-death-penalty felony case; the defendant did not show any prejudice as a

result. *Adams v. State*, 322 Ga. App. 782, 746 S.E.2d 261 (2013).

Application

Failure to timely file transcript.

As a mother appealed the trial court's denial of her request to modify the parties' parenting plan with respect to their child, but she failed to provide any transcripts for the record on appeal, it was presumed that the evidence supported the trial court's factual findings. *Gilchrist v. Gilchrist*, 323 Ga. App. 555, 747 S.E.2d 75 (2013).

5-6-44. Authorization and procedure generally for filing of joint appeals, motions for new trial, and other motions; division of costs between parties.

JUDICIAL DECISIONS

Cited in *Cancel v. Sewell*, 321 Ga. App. 523, 740 S.E.2d 870 (2013).

5-6-45. Operation of notice of appeal as supersedeas in criminal cases; bond; review.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Cited in *Brown v. State*, 322 Ga. App. 446, 745 S.E.2d 699 (2013).

5-6-46. Operation of notice of appeal as supersedeas in civil cases; requirement of supersedeas bond or other security; fixing of amount; procedure upon no or insufficient filing; effect of bond as to liability of surety; punitive damages.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

APPLICABILITY OF AUTOMATIC SUPERSEDEAS PROVISION

General Consideration

Cited in *Sherman v. Atlanta Indep. Sch. Sys.*, 293 Ga. 268, 744 S.E.2d 26 (2013).

Applicability of Automatic Supersedeas Provision

Appeal to Supreme Court of contempt order issued by trial court acts as supersedeas

Because the supreme court maintained jurisdiction over the June 27th contempt order finding that the husband failed to comply with the terms of the parties' divorce decree and the supersedeas of that order remained in effect until October 18, 2012, the day that the remittitur was filed

in the trial court, the trial court lacked jurisdiction on October 16, 2012, to enter an order holding the husband in contempt. *Massey v. Massey*, 294 Ga. 163, 751 S.E.2d 330 (2013).

Substitution on consent could not be challenged on appeal. — Debtor could not challenge a judgment entered on remittitur by raising arguments regarding an assignee's payment of consideration for a judgment entered against the debtor, although the issue was not within the scope of the prior appeal, as the debtor had consented to the assignee's substitution into the action in place of the bank, as well as the assignment of the judgment to it. *Martin v. Hamilton State Bank*, 323 Ga. App. 185, 746 S.E.2d 750 (2013).

5-6-48. Grounds for dismissal of appeal; amendments; correcting or supplementing record or transcript; effect of dismissal of appeal upon cross appeal; effect of deficiencies upon consideration of appeal.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

MANDATORY DISMISSAL OF APPEAL

4. MOOT QUESTIONS

DELAY OCCASIONED BY NONPAYMENT OF COSTS

2. UNREASONABLE, INEXCUSABLE DELAY

General Consideration

Cited in *Cancel v. Sewell*, 321 Ga. App. 523, 740 S.E.2d 870 (2013); *Morgan v. State of Ga.*, 323 Ga. App. 852, 748 S.E.2d 491 (2013).

Mandatory Dismissal of Appeal

4. Moot Questions

Appeal deemed moot and dismissed.

In a post-divorce proceeding, the appellate court dismissed a father's appeal of the trial court's rulings with regard to the writ for habeas corpus filed seeking to enforce visitation rights because the appeal was moot since the father's visitation was restored. *Higdon v. Higdon*, 321 Ga. App. 260, 739 S.E.2d 498 (2013).

Delay Occasioned by Nonpayment of Costs

2. Unreasonable, Inexcusable Delay

Unreasonable delay warrants dismissal.

Dismissal of appeal for failure to pay costs of the appeal was affirmed because the defendants delayed 37 days in paying costs and such delay was prima facie unreasonable and inexcusable. Defendants cited no case law indicating that the 30-day period was to be calculated in any manner other than by calendar days. *Cent. Ga. Dev. Group, Inc. v. Synovus Bank*, 320 Ga. App. 893, 740 S.E.2d 812 (2013).

CHAPTER 7

APPEAL OR CERTIORARI BY STATE IN CRIMINAL CASES

5-7-1. Orders, decisions, or judgments appealable; defendant's right to cross appeal.

Law reviews. — For article, "Appeal and Error: Appeal or Certiorari by State in Criminal Cases," see 30 Ga. St. U.L.

Rev. 17 (2013). For annual survey on criminal law, see 65 Mercer L. Rev. 79 (2013).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

JUDGMENTS DISMISSING INDICTMENT OR ACCUSATIONS

ORDERS SUPPRESSING EVIDENCE

APPLICATION GENERALLY

General Consideration

State had no right to appeal from no contest plea. — Trial court's order vacating guilty plea and entering a plea of no contest in its stead was not an order from which the state could appeal under O.C.G.A. § 5-7-1. The order at issue merely vacated the defendant's guilty plea and substituted a no contest plea in its place, and the state had no right to appeal from such an order. *State v. Hill*, 321 Ga. App. 759, 743 S.E.2d 448 (2013).

Court of Appeals lacked jurisdiction.

Because the defendant did not file either a cross-appeal to the state's appeal or a separate notice of appeal regarding the superior court's adverse rulings on the other alleged violations of the statute regarding the presiding judge's allegedly improper questioning of the defendant, the appellate court lacked jurisdiction to consider the defendant's allegations of error arising from the superior court's adverse rulings. *State v. Nickerson*, 324 Ga. App. 576, 749 S.E.2d 768 (2013).

Cited in *State v. Nicholson*, 321 Ga. App. 314, 739 S.E.2d 145 (2013); *State v. Wakefield*, 324 Ga. App. 587, 751 S.E.2d 199 (2013).

Judgments Dismissing Indictment or Accusations

State may appeal order dismissing indictment, etc.

In the state's appeal, it was held that a trial court abused the court's discretion by dismissing an indictment against the defendant charging the defendant with felony theft by taking because the fact that it could take years before the defendant would be able to appear in court due to the defendant's immigration status did not provide any legal basis for dismissing the indictment. *State v. Bachan*, 321 Ga. App. 712, 742 S.E.2d 526 (2013).

Orders Suppressing Evidence

Suppression of evidence from sobriety checkpoint authorized. — Appellate court erred by reversing a trial court decision granting the appellant's motion to suppress evidence resulting from a traffic safety checkpoint stop of appellant's vehicle because the checkpoint at which appellant was stopped was unconstitutional since the checkpoint did not meet the case law requirement that supervisory personnel made the decision to implement the checkpoint. *Brown v. State*, 293 Ga. 787, 750 S.E.2d 148 (2013).

Application Generally

State's appeal from void order.

State's appeal from a trial court order that granted the defendant's amended motion for new trial in substance arrested the judgment of conviction, but the court did so improperly by considering the claim for relief, that the accusation was fatally defective, as part of the motion for new trial; rather, the state's appeal was pursuant to the state's right to appeal directly from a void or illegal judgment. *State v. Graves*, 322 Ga. App. 798, 746 S.E.2d 269 (2013).

Sentences not void. — State did not have the right to appeal sentences imposed by the trial court contrary to a plea agreement under O.C.G.A. § 5-7-1(a)(6) because the sentences were not void; the sentences were within the 20-year range of punishments for robbery and aggravated assault, O.C.G.A. §§ 16-5-21(b) and 16-8-40(b), and the trial court had jurisdiction over the case, pursuant to Ga. Const. 1983, Art. VI, Sec. IV, Para. I and O.C.G.A. § 15-6-8(1). *State v. Harper*, 279 Ga. App. 620, 631 S.E.2d 820 (2006) was overruled. *State v. King*, 325 Ga. App. 445, 750 S.E.2d 756 (2013).

5-7-2. Certification required for immediate review of nonfinal orders, decisions, or judgments; exception; motion for new trial.

Law reviews. — For article, “Appeal in Criminal Cases,” see 30 Ga. St. U.L. and Error: Appeal or Certiorari by State Rev. 17 (2013).

JUDICIAL DECISIONS

Cited in State v. Nicholson, 321 Ga. App. 314, 739 S.E.2d 145 (2013).

5-7-6. Construction of chapter.

Law reviews. — For article, “Appeal in Criminal Cases,” see 30 Ga. St. U.L. and Error: Appeal or Certiorari by State Rev. 17 (2013).

TITLE 6

AVIATION

Chap.

3. Powers of Local Governments as to Air Facilities, 6-3-1 through 6-3-28.

CHAPTER 3

POWERS OF LOCAL GOVERNMENTS AS TO AIR FACILITIES

Article 2

Powers of Local Governments as to Air Facilities

controlled, or occupied by local governments deemed for public purposes; effect on ad valorem taxation.

Sec.

- 6-3-21. Lands acquired, owned, leased,

ARTICLE 2

POWERS OF LOCAL GOVERNMENTS AS TO AIR FACILITIES

6-3-21. Lands acquired, owned, leased, controlled, or occupied by local governments deemed for public purposes; effect on ad valorem taxation.

Any lands acquired, owned, leased, controlled, or occupied by counties, municipalities, or other political subdivisions for the purpose or purposes enumerated in Code Section 6-3-20 shall be and are declared to be acquired, owned, leased, controlled, or occupied for public, governmental, and municipal purposes; provided, however, that with respect to facilities located on such lands, which lands are located outside of the territorial limits of the political subdivision that leases such lands and which are leased to, controlled, or occupied by private parties, the interests created in such private parties, for the purpose of ad valorem taxation only, are declared not to be used for public, governmental, or municipal purposes and said resulting interests, so long as the interests create an estate in land, are subject to ad valorem taxation; provided, further, that the underlying fee interest in such property which remains vested in the county, municipality, or other political subdivision shall be deemed to be used for public, governmental, and municipal purposes. The municipality's interest in lands and the facilities located thereon located inside the territorial limits of a municipality which are owned by that municipality for the purposes

enumerated in Code Section 6-3-20, are declared to be used for public, governmental, or municipal purposes and are not subject to ad valorem taxation. (Ga. L. 1933, p. 102, § 2; Code 1933, § 11-202; Ga. L. 1983, p. 647, § 1; Ga. L. 1985, p. 1649, § 1; Ga. L. 2014, p. 824, § 1/HB 399.)

The 2014 amendment, effective April 29, 2014, substituted “so long as the interests create an estate in land” for “regard- less of the extent of such interest, whether possessory or an estate in land” near the end of the first sentence.

